

REMARKS

As a preliminary matter Applicant thanks the Examiner for the indication of allowable subject matter with respect to at least claims 5-7, 9, 15, 16, 18, 20-22, 24-26, 28, 31, 32, 34 and 35. No indication is given as to the status of claim 33. Claim 32, however, is indicated as being both allowed and rejected. Applicant presumes the Examiner intended to indicate claim 32, which depends directly from allowed claim 5, as being allowed, and claim 33 as being rejected. That also coincides with the Detailed Action portion of the Office Action, wherein claim 33 is indicated as being rejected under 35 U.S.C. § 102 (*see* page 4 of the Office Action) and claim 32 is indicated as being allowed (*see* page 5 of the Office Action).

The present amendment is intended to be fully responsive to the Final Office Action having a mailing date of May 1, 2008, wherein claims 1-4, 10-13, 19, 23, 27, 30 and 32 stand rejected.

By this amendment, claims 1, 3, 10, 12, 19, 30 and 33 have been amended. Claims 2 and 11 have been cancelled without prejudice. By this amendment, claims 1, 3-7, 9, 10, 12, 13, 15, 16, 18-28, and 30-35 are now pending in the Application. Applicants submit that no new matter has been added by this amendment. Support for the claims, as amended, may be found in the claims as originally presented, and elsewhere throughout the specification, drawings, and claims as originally presented.

Applicants thank the Examiner for the entry of the amendments and consideration of the arguments presented in the AMENDMENT IN RESPONSE TO NON-FINAL OFFICE ACTION filed by Applicants on February 12, 2008. Applicants further thank the Examiner for withdrawing the rejection of claim 19 as being anticipated under 35 U.S.C. § 102(b) by Wheeler et. al. (6,445,992), and for the comments in the Office Action responding to Applicants' arguments, and for finding that the Application contains allowable subject matter.

The present amendment is fully responsive to the Office Action. Applicants submit that no new matter has been added by this amendment and that support for the claims as amended may be found throughout the specification and drawings. At least for the reasons set forth below,

Applicants respectfully traverse the foregoing rejections. Further, Applicants believe that there are also reasons, other than those set forth below, why the pending claims are patentable, and accordingly reserves the right to set forth those reasons, and to argue for the patentability of claims not explicitly addressed herein, in future papers. For any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

Applicants respectfully request reconsideration of the present Application in view of the above amendments and the following remarks.

Claim Rejections – 35 U.S.C. § 102

I. Claims 1, 2, 4, 10, 11, 13, 30 and 33 stand rejected under 35 U.S.C. §102(b) as being anticipated by Wheeler et al. (U.S. 6,445,992) (hereinafter “Wheeler”).

A. Claims 2, 11, 30 and 33

The Examiner contends that the term “throttle displacement”, as used in Wheeler to designate a throttle position, corresponds to the “throttle application rate”, as recited in claims 2 and 11 of the present Application, and the “acceleration of throttle application”, as recited in claims 30 and 33. The rejection is respectfully traversed. The three terms each refer to a completely different and distinct physical characteristic. The term “throttle displacement”, as used in Wheeler, refers to the position of the throttle (*see* Wheeler, column 2, lines 51-52). The “throttle displacement” may correspond to a distance from a reference position, for example. The term “throttle application rate”, as recited in claims 2 and 11 of the present Application, refers to the velocity at which the throttle is moved from one position to another. Velocity is defined as the time rate of change of displacement (*see* Marks Standard Handbook for Mechanical Engineers, Seventh Edition, pg. 3-16). The “throttle application rate” is thus the rate at which the throttle is moved from one position to another specified as a function of time. The term “acceleration of throttle application”, as recited in

claims 30 and 33 of the present Application, refers to the rate at which the “throttle application rate” changes. Acceleration is defined as the rate of change of velocity (*see Marks Standard Handbook for Mechanical Engineers*, Seventh Edition, pg. 3-16). Thus, the term “acceleration of throttle application” represents the rate at which the “throttle application rate” changes specified as a function of time. The three terms clearly have entirely different and distinct meanings. Wheeler, however, only discusses throttle positioning (i.e., “throttle displacement”), and does not make mention of either throttle velocity (i.e., “throttle application rate”) or throttle acceleration (i.e., “acceleration of throttle application”).

Wheeler describes a method for engaging a transmission clutch to achieve a desired torque output when operating the vehicle at an idle condition. The vehicle operating condition is determined based on three parameters (*see* the first flow chart decision box in Fig. 4 of Wheeler, and column 3, lines 66-67 and column 4, lines 1-34 of the written description): the throttle position (“THL” in Fig. 4 of Wheeler; *see also* column 2, lines 51-52), the speed of the output shaft (“OS” in Fig. 4 of Wheeler; *see also* column 3, line 9), and the transmission gear ratio selected (“GR” in Fig. 4 of Wheeler; *see also* column 5, lines 45-48). The throttle position may be determined based on the distance the throttle is displaced from a reference position. Nowhere, however, does Wheeler describe using the velocity at which the throttle is applied (i.e., “throttle application rate” of claims 2 and 11), nor the rate at which the throttle application velocity changes (i.e., the “acceleration of throttle application” of claims 30 and 33) as one of the parameters for setting the operating mode of the clutch. Indeed, the velocity at which the throttle is applied and the rate at which the throttle application velocity is accelerated are not even mentioned in Wheeler, let alone being described as parameters for setting the clutch operating mode. The velocity at which the throttle is applied and the rate at which the throttle application velocity varies are also not factors that go into determining of any of the parameters described in Wheeler as being used to set the clutch operating mode. Wheeler gives no consideration as to whether the throttle is being applied slowly or quickly, or whether the throttle application rate is constant or accelerating. The only consideration under Wheeler is whether the throttle position falls within a predetermined range of positions coinciding with the idle operating condition. The mode by which the throttle is moved to a given position (i.e.,

the throttle application velocity and acceleration) is of no consequence under Wheeler.

Accordingly, it is respectfully submitted that Wheeler does not anticipate claims 2, 11, 30 and 33.

Independent claims 1 and 10 have herein been rewritten to include the recitations of dependent claims 2 and 11, respectively. Claims 2 and 11 have accordingly been cancelled without prejudice. Dependent claims 30 and 33 have been rewritten to include the recitations of independent claims 1 and 10, respectively. Accordingly, it is respectfully requested that the rejection with respect to claims 1, 10, 30 and 33 be reconsidered and withdrawn.

B. Claims 1, 4, 10 and 13

The rejection with respect to claims 1, 4, 10 and 13 is respectfully traversed. Claims 1 and 10 have been herein amended to include the recitations of dependent claims 2 and 11, respectively. Claims 4 and 13 are dependent upon independent claims 1 and 10, respectively. The same arguments made above with respect to claims 2 and 11 are equally applicable to claims 1, 4, 10 and 13. Thus, it is respectfully requested that the current rejection be reconsidered and withdrawn.

II. Claims 1, 3, 4, 10, 12, 13, 19, 23 and 27 stand rejected under 35 U.S.C. § 102(b), as being anticipated by Ward et al. (U.S. 5,383,823) (hereinafter “Ward”).

A. Claims 1, 4, 10 and 13

The rejection with respect to claims 1, 4, 10 and 13 is respectfully traversed. Claims 1 and 10 have been herein amended to include the recitations of dependent claims 2 and 11, respectively. Claims 4 and 13 are dependent upon independent claims 1 and 10, respectively. The same arguments made above with respect to claims 2 and 11 are equally applicable to claims 1, 4, 10 and 13. Thus, it is respectfully requested that the current rejection be reconsidered and withdrawn.

B. Claims 3 and 23

The rejection with respect to claims 3 and 23 is respectfully traversed. Claim 3 has been herein amended to depend from claim 1. Claim 23 is dependent upon claim 3. The same arguments made above with respect to claim 2 are equally applicable to claims 3 and 23. Thus, it is respectfully requested that the current rejection be reconsidered and withdrawn.

C. Claims 12 and 27

The rejection with respect to claims 12 and 27 is respectfully traversed. Claim 12 has been herein amended to depend from claim 10. Claim 27 is dependent upon claim 12. The same arguments made above with respect to claim 11 are equally applicable to claims 12 and 27. Thus, it is respectfully requested that the current rejection be reconsidered and withdrawn.

D. Claim 19

The rejection with respect to claim 19 is respectfully traversed. Claim 19 has been herein amended to depend from claim 1. The same arguments made above with respect to claim 2 are equally applicable to claim 19. Thus, it is respectfully requested that the current rejection be reconsidered and withdrawn.

CONCLUSION

All rejections have been addressed. In view of the above, the pending claims are believed to be in condition for allowance over the cited prior art. Accordingly, reconsideration and allowance are respectfully requested and the Examiner is respectfully requested to pass this Application to issue. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under Order No. 65856-0075 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Respectfully submitted,

Dated: July 1, 2008

Electronic Signature: /Daniel J. Checkowsky/
Michael B. Stewart
Registration No.: 36,018
Daniel J. Checkowsky
Registration No.: 51,549
RADER, FISHMAN & GRAUER PLLC
Correspondence Customer Number: 10291
Attorneys for Applicant